Spencer Group Inc., Ltd. *and* Local 24, Hotel and Restaurant Employees International Union, AFL–CIO. Case 7–CA–44756

October 21, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. On a charge filed by the Union on January 18, 2002, the General Counsel issued the complaint on March 15, 2002, against The Spencer Group Inc., Ltd., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the Act. The Respondent failed to file an answer.

On May 1, 2002, the General Counsel filed a Motion for Summary Judgment with the Board. On May 8, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 3, 2002, notified the Respondent that unless an answer was received by April 12, 2002, a Motion for Summary Judgment would be filed.[1]

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Michigan corporation with its principal office and place of business at 243 W. Congress, Suite 350, Detroit, Michigan, has maintained a place of business at Detroit Metropolitan Airport, Romulus, Michigan (the Respondent's Romulus facility), from which it is engaged in the operation of a public restaurant selling food and beverages. During the calendar year ending December 31, 2001, the Respondent, in conducting its business operations, derived gross revenues in excess of $500,000, and purchased and received at its Michigan facilities products, goods, and materials valued in excess of $5000 from other enterprises located within the State of Michigan, each of which other enterprises had received these goods directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 24, Hotel and Restaurant Employees International Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit (the unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All cooks, bakers, storeroom employees, utility employees, hosts/hostesses, cashiers, deli/grill attendants, bartenders, pantry employees, snack bar employees, fast food attendants and servers employed by Respondent at Detroit Metropolitan Airport, but excluding confidential employees, watchmen, and guards and supervisors as defined in the Act.

At all material times, by virtue of successive collective-bargaining agreements, the most recent of which is effective from November 1, 1999 through October 31, 2002, the Union has been the exclusive collective-bargaining representative for purposes of collective bargaining of the unit and has been recognized as such by the Respondent.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

[1] This April 3 letter was sent by both certified and regular mail to the same address at which the Respondent accepted service of the complaint. The copy of this letter sent by certified mail was returned stamped, "moved, left no address." The copy of the letter sent by regular mail was not returned. The Respondent's failure or refusal to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Summit Mechanical Contractors*, 316 NLRB 699 fn. 2 (1995). In any event, that the Respondent may not have received the Region's letter reminding it of the obligation to file an answer does not warrant denying the General Counsel's motion. See, e.g., *Superior Industries*, 289 NLRB 834, 835 fn. 13 (1988). The General Counsel has established proof of service of the complaint, which, as noted above, sets forth the Respondent's obligation to file an answer, and the consequences of failing to do so.

On about August 10, 2001, the Union, by letter, requested that the Respondent furnish it with certain information, including, inter alia, the reasons for the discipline, suspension, and discharge of a unit employee, and all disciplinary notices and any other documents related to the discipline, suspension, and discharge.

The specific information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about August 10, 2001, the Respondent has failed and refused to furnish the Union with the specific information it requested.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.[2]

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to furnish the Union with the following information requested in its letter of August 10, 2001: the reasons for the discipline, suspension, and discharge of a unit employee, and all disciplinary notices and any other documents related to the discipline, suspension, and discharge.

ORDER

The National Labor Relations Board orders that the Respondent, The Spencer Group Inc., Ltd., Detroit and Romulus, Michigan, its officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Local 24, Hotel and Restaurant Employees International Union, AFL–CIO, by failing and refusing to provide the Union with information that is necessary for, and relevant to, its performance of its function as the exclusive representative of the employees in the following appropriate unit:

> All cooks, bakers, storeroom employees, utility employees, hosts/hostesses, cashiers, deli/grill attendants, bartenders, pantry employees, snack bar employees, fast food attendants and servers employed by Respondent at Detroit Metropolitan Airport, but excluding confidential employees, watchmen, and guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the following information requested in its letter of August 10, 2001: the reasons for the discipline, suspension, and discharge of a unit employee, and all disciplinary notices and any other documents related to the discipline, suspension, and discharge.

(b) Within 14 days after service by the Region, post at its facilities in Detroit and Romulus, Michigan, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 10, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 21, 2002

[2] Members Cowen and Bartlett note that although the better practice in this case would have been for the General Counsel to specify in the complaint the name of the unit employee about whom the information was sought and to either quote in relevant part the letter requesting the information or attach a copy of the letter to the complaint, the complaint allegations meet the minimum standard for alleging an unlawful refusal to provide information relevant and necessary to collective bargaining given that this case involves presumptively relevant information.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Chose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Local 24, Hotel and Restaurant Employees International Union, AFL–CIO, by failing and refusing to provide the Union with information that is necessary for, and relevant to, its performance of its function as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All cooks, bakers, storeroom employees, utility employees, hosts/hostesses, cashiers, deli/grill attendants, bartenders, pantry employees, snack bar employees, fast food attendants and servers employed by us at Detroit Metropolitan Airport, but excluding confidential employees, watchmen, and guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the following information requested in its letter of August 10, 2001: the reasons for the discipline, suspension, and discharge of a unit employee, and all disciplinary notices and any other documents related to the discipline, suspension, and discharge.

THE SPENCER GROUP INC., LTD.